IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.2889 OF 2007
IN
SUIT NO.4174 OF 1998

Smt.Santosh Bharat Soni ...Plaintiff
vs.
M/s.Manek Developers ...Defendant

Mr.C.N.Chavan for the Applicant in support of Notice of Motion
Ms Kiran P. Jain Plaintiff

CORAM: A.S.OKA,J.
DATE : AUGUST 6,2007

P.C.:

1. Heard learned Counsel for the defendant in support of notice of motion. The prayer in this notice of motion is for condonation of delay in filing the written statement and for direction to the office to take on record the written statement.

2. In the affidavit in support it is contended that the summons was served on 23rd March 2005. It is contended that the summons was served on the partners of the defendant on the returnable date in the year 2005. It is stated that the partners were not aware of the dates on which the suit appeared on board of the Prothonotary and Senior Master for directions. It is, therefore, submitted that the written statement may be taken on record. The notice of motion is opposed by the learned counsel for the Plaintiff. Reliance is placed on the affidavit-in-reply in which it is stated that in fact the summons was served in the year 1998 and only by way of abundant precaution, a notice under the provisions of Rule 5 of Order XXX of the Code of Civil Procedure,1908 with a writ of summons was issued to the partners in the year 2005. The

learned counsel for the Plaintiff submitted that the defendant was represented by an Advocate and time was granted by the learned Prothonotary and Senior Master on number of occasions to the said Advocate to file written statement. The learned counsel for the plaintiff submitted that there is no explanation for delay of more than eight years.

3. Perusal of the record shows that the order of the learned Prothonotary and Senior Master directing that the suit shall be transferred to the list of undefended suits for exparte decree was passed on 21st November 2006. The present notice of motion is filed on 30th July 2007.

4. Considering the nature of reliefs sought in the plaint, the defendant deserves to be granted permission to file the written statement. However, the defendant will have to pay costs to the plaintiff. The amount of costs is quantified at Rs.15,000/-.

5. Hence, notice of motion is made absolute in terms of prayer clauses (a) and (b) subject to the condition of the defendant paying costs of Rs.15,000/- to the plaintiff within a period of four weeks from today.

6. If compliance is made within stipulated period, the suit will be removed from the category of undefended suits for exparte decree. However, if compliance is not made within stipulated period, the suit will be placed on board on 13th September 2007 under the caption ‘undefended suits for exparte decree’.

JUDGE